

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ANGEL VELAZQUEZ,	)	
	)	
Petitioner,	)	4:06CV3099
	)	
v.	)	
	)	
FRED BRITTEN,	)	ORDER
	)	
Respondent.	)	
_____	)	

This matter is before the Court on petitioner's motion for notice of appeal and request for certificate of appealability (Filing No. 13), his motion and affidavit for permission to appeal *in forma pauperis* (Filing No. 14), and his motion for appointment of counsel (Filing No. 15). The petitioner seeks to appeal from this Court's order of October 24, 2006 (Filing No. 12), denying his petition for writ of habeas corpus.

The Court finds that the petitioner qualifies to proceed *in forma pauperis* and his motion will be granted. Before such an appeal can progress, however, 28 U.S.C. § 2253(c) provides that either a circuit justice or judge issue a certificate of appealability. Petitioner's request will be denied because he has failed to make a substantial showing of the denial of a constitutional right. Accordingly,

IT IS ORDERED:

1) Petitioner's motion and affidavit for permission to appeal *in forma pauperis* is granted.

2) Petitioner's motion for certificate of appealability is denied.

3) Petitioner's motion for appointment of counsel is denied without prejudice, subject to renewal before the United States Court of Appeals for the Eighth Circuit.

DATED this 1st day of February, 2007.

BY THE COURT:

/s/ Lyle E. Strom

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LYLE E. STROM, Senior Judge  
United States District Court